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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,749	04/12/2006	Germano Emiliani	05581-00145-US	3276
23416 7590 01/09/2008 CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899			EXAMINER AHMED, SHEEBA	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 01/09/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/575,749	EMILIANI ET AL.	
	Examiner	Art Unit	
	Sheeba Ahmed	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26, 29 and 30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/12/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Preliminary Amendment

1. The Preliminary Amendment submitted on April 12, 2006 has been entered in the above-identified application. Claims 4-26 have been amended. Claims 27 and 28 are cancelled. Claims 29 and 30 are new. **Claims 1-26, 29, and 30 are now pending.**

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 29 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 29 and 30 provides for the use of the label, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 29 and 30 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Giacobbe et al. (US 5,641,848 A).

Giacobbe et al. disclose a blown film or sheet material comprising a broad molecular weight distribution propylene polymer material having a molecular weight distribution Mw /Mn of about 4 to about 60, a melt flow rate of about 0.5 to about 50 dg/min, and xylene insolubles at 25°C. of greater than or equal to 94%. A mixture of

the broad molecular weight distribution propylene polymer material and a heterophasic olefin polymer composition can also be used (See Abstract). The broad molecular weight distribution propylene polymer material can be, for example, a broad molecular weight propylene homopolymer, or an ethylene/propylene rubber impact-modified broad molecular weight distribution propylene homopolymer. The broad molecular weight distribution propylene homopolymer can also be blended with about 10% to about 90% by weight, based on the total weight of the composition, of a heterophasic olefin polymer composition to give a film with increased impact and tear resistance. The amount of heterophasic olefin polymer composition used depends upon the film properties that are desired. The heterophasic olefin polymer composition is prepared by polymerization in at least two stages and comprises (a) from about 10 to about 50 parts of a propylene homopolymer having an isotactic index greater than 80, or a copolymer selected from the group consisting of (i) propylene and ethylene, (ii) propylene, ethylene and an alpha-olefin, and (iii) propylene and an alpha-olefin as defined in (ii), said copolymer containing over 80% propylene and having an isotactic index greater than 80; (b) from about 5 to about 20 parts of a semi-crystalline, essentially linear copolymer fraction having a crystallinity of about 20% to about 60%, wherein the copolymer is selected from the group consisting of (i) ethylene and propylene containing over 55% ethylene, (ii) ethylene, propylene, and an alpha-olefin as defined in (a) (ii) containing from 1 to 10% of the alpha-olefin and over 55% of both ethylene and alpha-olefin, and (iii) ethylene and an alpha-olefin as defined in (a) (ii) containing over 55% of said alpha-olefin, which copolymer is insoluble in


xylene at room or ambient temperature; and (c) from about 40 to 80 parts of a copolymer fraction wherein the copolymer is selected from the group consisting of (i) ethylene and propylene containing from 20% to less than 40% ethylene, (ii) ethylene, propylene, and an alpha-olefin as defined in (a) (ii), wherein the alpha-olefin is present in an amount of 1 to 10% and the amount of ethylene and alpha-olefin present is from 20% to less than 40%, and (iii) ethylene and an alpha-olefin as defined in (a) (ii) containing from 20% to less than 40% of said alpha-olefin, and optionally with 0.5 to 10% of a diene, said copolymer fraction being soluble in xylene at ambient temperature, and having an intrinsic viscosity of from 1.5 to 4.0 dl/g; with the total of the (b) and (c) fractions, based on the total olefin polymer composition, being from about 50% to about 90%, and the weight ratio of (b)/(c) being less than 0.4, wherein said composition has a flexural modulus of less than 150 MPa. The film or sheet material can also contain various additives known to those skilled in the art, such as, for example, fillers such as talc and calcium carbonate, pigments, antioxidants, slip agents, and antiblock agents. With regards to the Vicat softening point limitation of the heterophasic polymer, the Examiner takes the position that such a property limitation must be inherent in the heterophasic polymer taught by Giacobbe et al. given that the chemical composition of the two polymers as taught by Giacobbe et al. and that of the claimed invention are identical. All limitations of claims 1-26 are either inherent or disclosed in the above reference.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (571)272-1504. The examiner can normally be reached on Monday-Friday from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Sheeba Ahmed
January 5, 2008